

REMARKS

Claims 1-15 are currently pending in this application. Applicants respectfully request favorable consideration of the present application in light of the amendments to the claims and the following remarks.

Restriction

On pages 2-3 of the Office Action, restriction was required to one of the invention of Group I (Claims 1-15 – drawn to method(s) of sealing a hole) and Group II (Claims 16-29 and 39-41 – drawn to a device for sealing a hole in a body). Applicants have already traversed this restriction in Response to Restriction Requirement filed August 8, 2002, but nonetheless elect the invention of Group I set forth in Claims 1-15 (method for sealing a hole) and cancel from prosecution (without prejudice) Claims 16-29 and 39-41.

Claim Rejections – 35 USC 102(b)

Claims 1-3, 5-6, 8-9 and 12-15 were rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,061,274 to Kensey.

In order for a reference to anticipate the present claimed invention under 35 U.S.C. 102(b), it must be shown that each and every element of the claim can be found in the reference. If it can be shown that one element of the claim is missing or not met by the cited reference, the rejection must be withdrawn as inappropriate.

Claim 1, as amended, describes a method of sealing a hole in a body part. The first step involves introducing a generally cylindrical shaped mesh into the hole. The second step involves moving at least one end of the cylindrical shaped mesh at least partially into an interior portion of the cylindrical shaped mesh such that the mesh expands radially outwards against sides of the hole.

Claim 14, as amended, describes a method of sealing a hole in a body. The first step involves introducing a generally cylindrically shaped mesh into the hole. The second step involves pushing a proximal end of the cylindrically shaped mesh at least partially into an interior portion thereof.

Claim 15, as amended, describes a method of sealing a hole in a body. The first step involves introducing a cylindrically shaped mesh into the hole. The second step involves pulling a distal end of the cylindrically shaped mesh at least partially back into an interior portion thereof.

The Kensey reference appears to be silent with regard to at least one element found in amended Claims 1, 14 and 15, such that the rejection for anticipation should be withdrawn. First, contrary to the assertion in the Office Action, Kensey does *not* appear to disclose the feature of introducing a *generally cylindrical shaped mesh* into a hole. Rather, the device 20 in Kensey is “a plug made up of a cord-like member [50] and a thin filament [56, 58].” (*See, e.g., Col. 3, lines 33-37*). As opposed to being a mesh element as described and claimed in the present application, the cord-like member 50 “comprises a ...material...folded in two to form an apex portion [64] and a pair of wing portions [66A, 66B] extending therefrom.” (*Id.*) This is further evident with reference to the definition of “cord” within the Kensey patent, wherein is specifies that this “may merely consist of a strip or bar of ...material which is sufficiently flexible to fold over and form the heretofore described apex and wing portions.” (*Col. 7, lines 56-59*). To the extent the plug 20 in Kensey takes the form of a cylinder, it only does so after being introduced into the tubular member 30. The mesh of the present invention, on the contrary, is a generally cylindrical shaped article prior to introduction (and may therefore be used with or without a tubular introducer).

The Kensey reference also appears to be silent with regard to the feature of moving at least one end of the cylindrical shaped mesh at least partially into an *interior portion* of the cylindrical shaped mesh such that the mesh expands radially outwards against sides of the hole. While the Kensey reference does disclose the use of a proximal filament 58 to help create an expanded region at the distal end (*See Col. 3, lines 48-52*), it does not appear that it accomplishes this by moving the distal end (apex 66) *into* the interior of the plug 20. Rather, at most Kensey teaches that the apex 66 can be pulled proximally to a point where it is flush with the opening of the interior of the plug 20, in contradistinction to the mesh of the present invention which, as claimed, has one end moved at least partially *into* the interior portion to expand the mesh radially outwards against the sides of the hole.

Because Kensey fails to teach or disclose at least one claimed feature in each of independent claims 1, 14 and 15, Applicants respectfully submit that the rejection under 35 USC 102(b) should be withdrawn in favor of an indication of allowance, which is hereby earnestly solicited. Claims 2-9 and 12-13 (being dependent upon and further limiting independent claim 1) should be allowable for the reasons set forth in support of the allowability to claim 1, as well as the additional recitations they contain.

Allowable Subject Matter

Applicants wish to thank the Examiner for the indication of allowability with respect to claims 4, 7 and 10-11. In response, Applicants have rewritten claims 10 and 11 in independent form, with claim 10 drawn to a method of sealing a hole in a bony structure and claim 11 drawn to a method of sealing a hole in a vertebral annulus.

CONCLUSION

The foregoing amendment has been submitted to place the present application in condition for allowance. Favorable consideration and allowance of the claims in this application is respectfully requested. In the event that there are any questions concerning this Amendment or the application in general, the Examiner is cordially invited to telephone the undersigned attorney so that prosecution may be expedited.

Respectfully submitted,
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